

**MEMORANDUM OF UNDERSTANDING
for the Implementation of the Maryland Community College
Energy-to-Cash Program**

**STATE OF MARYLAND
MARYLAND ENERGY ADMINISTRATION
1800 Washington Blvd, Suite 755
Baltimore, MD 21230**

hereinafter “MEA”

and

XXXX COLLEGE
City, MD Zip
hereinafter “XXXX College” or “College”

PREMISES

The purpose of this MOU (the “Agreement”) is to set forth the duties of MEA and XXXX College (collectively, the “Parties”) with respect to the diagnosis, selection, and implementation of energy cost-reducing measures in selected facilities on the XXXX College campus. The Parties are undertaking this collaboration as part of the FY20 Maryland Community College Energy-to-Cash Program.

MEA is an independent unit of the State’s government that works with Federal, State, local, and private entities to develop and promote policies related to energy efficiency and renewable energy. As part of that effort, MEA seeks to engage counties and schools in Maryland to implement energy efficiency measures and practices. The Maryland Community College Energy-to-Cash Program (the “Program”) will allow the MEA to work with the State’s community colleges to implement cost-saving energy efficiency measures on community college campuses.

As part of its statutory duties described in Md. Code Ann., State Government Article § 9-2003, MEA provides advisory, consultative, training, and educational services, technical assistance and grants to county and State units and nonprofit organization to establish and implement sound energy measures, including energy conservation.

MEA administers the Strategic Energy Investment Program set forth in Md. Code Ann., State Government Article §§ 9-20B-01 et seq. (“SEIF Statute”) as a component of its overall mission to reduce energy demand and increase energy efficiency and the use of renewable energy resources. MEA has established the Program pursuant to the authority provided in the SEIF statute. This Program, funded through the Strategic Energy Investment Fund (SEIF), will encourage and assist Maryland community colleges to implement energy efficiency measures in campus buildings.

MEA recognizes that some community colleges may lack sufficient resources to fully pursue implementing energy efficiency measures to campus facilities. In March 2018, consistent with its statutory duties, MEA proposed to the Maryland Association of Community Colleges (MACC) a program concept to provide programmatic assistance for implementing energy efficiency measures in campus buildings.

NOW, THEREFORE, the Parties hereby agree as follows:

1. Purpose and Program Objectives

A. The purpose of this Agreement is to form a collaboration between the Parties in efforts to maximize potential energy savings on the College’s campus and to further the objectives of the Program detailed below.

B. Program Objectives

i. The primary Program objective is to minimize the cost, effort, and risk associated with pursuing energy efficiency measures in the College’s campus facilities.

ii. A secondary Program objective is to identify energy service providers best suited to provide energy auditing services and project construction management services relevant to the College. As a part of this objective, the Parties will explore potential opportunities to collaborate with programs affiliated with the University of Maryland and State agencies.

iii. A third Program objective is to further develop the relationship between community college curriculum development and the State’s energy services industry. Thus, whenever practicable, Parties will consider how to (1) engage with faculty members who may, at their option, obtain energy analysis data to devise educational exercises for students; (2) create employment for students during the Program’s implementation phase to collect and analyze energy data; (3) document existing energy best-practices for replication across the State’s community colleges; and (4) document

results in ways that may be used in the college's future marketing efforts for student enrollments.

2. Program Components

MEA will provide technical assistance and advice, as mutually agreeable and appropriate, regarding the College's options to obtain: (1) an energy audit to diagnose savings potential; (2) project finance in some combination of conduit (indirect) debt obligations, competitive grants, and utility rebates; and (3) general construction management for implementing energy efficiency measures. In order to reduce the College's risk and efforts in obtaining energy efficiency measures, the Parties agree to the following provisions and process.

(A) Cost-risk management.

i) This MOU does not diminish the College's complete and total discretion regarding how it obtains energy services, including the scope and costs of obtaining an energy audit and any construction project pursuant to this MOU.

ii) **Sufficient Energy Savings.** If the value of the first-year's potential energy savings identified in the energy audit is **greater** than or equal to twice the amount paid to an energy service provider to perform the energy audit, the College will be responsible for the full costs to obtain the energy audit. In this instance, MEA's grant may be used to match fifty percent of the College's cost to implement energy improvement projects identified in the energy audit, up to a maximum grant of \$20,000.

ii) **Insufficient Energy Savings.** If the value of the first-year's potential energy savings identified in the energy audit is **less** than twice the amount paid to an energy service provider to perform the energy audit, MEA will reimburse the College up to \$20,000 of the costs to obtain the energy audit. This instance assumes that the College will not implement energy improvements, so no grant funds can be provided for that purpose.

(B) Phase I: Audit Implementation – MEA will provide assistance in the areas specified below, as mutually agreeable.

i) **PLAN** – MEA will assist XXXX College to develop a strategy for retaining energy services commensurate with participation in this Program.

ii) **PARTNER** - MEA will facilitate a solution team, including the College representative, any energy services provider chosen by the College

and the utility representative, to identify available utility program services, construction management and project financing.

iii) PREPARE - MEA will assist the College and its energy service providers to determine the scope of facilities and mechanical systems to be studied.

iv) PRESCRIBE - Upon completion of an energy audit, and consistent with section 2(C), MEA will assist the College to identify construction and finance options to implement the identified energy efficiency measures, including utility rebates, grants and other incentives, and technical assistance.

v) PROCEED - Within 60 days of receiving the energy audit report, and if sufficient energy savings are identified, the College will notify MEA in writing of its decision whether or not to implement the potential energy efficiency measures identified in the energy audit.

vi) REPORTING - Within 30 days of receiving the energy audit results, XXXX College will provide MEA with a copy of the energy audit report.

(C) Phase II: Construction. If the College proceeds with the construction or implementation of any measures recommended by the energy audit, MEA will facilitate the College's deployment of a request for quotations/proposals for project construction. MEA will provide a grant award for construction per the terms described in Section 2(a)ii of this Agreement.

(D) Phase III: Performance Monitoring. If the College determines to implement the identified energy efficiency measures, then for up to three years after construction of the identified energy efficiency measures is complete, the Parties will collaborate to monitor and reports results, as set forth below.

i) The College will provide its utility billing information to MEA to allow it to monitor energy consumption and track realized annual savings.

ii) The College will clarify variances from expected energy performance results that may be attributed to the College's operational changes.

iii) The College will cooperate with MEA and allow MEA representatives access to its facilities so that MEA may develop one or more case studies documenting the College's energy-saving results. Each case study will include a narrative description and photos of energy efficiency measures and summary performance data. Each case study may include new initiatives and existing "best practices" that can be replicated by other community colleges.

3. Amount and Duration

(A) If an energy audit identifies sufficient energy savings, as set forth in Section 2(A), MEA will make available to XXXX College, consistent with this Agreement, a Grant Award of fifty percent (50%) of the College's cost of energy improvement project installation, **up to a Total Grant Award of Twenty Thousand Dollars (\$20,000)**.

(B) If an energy audit does not identify sufficient energy savings, as set forth in Section 2(A), MEA will make available to XXXX College, consistent with this Agreement, a Total Grant Award of **up to Twenty Thousand Dollars (\$20,000)** to reimburse XXXX College for its cost, or a portion of its costs, to obtain the energy audit.

(C) The Effective Date of this Agreement is the date that the properly executed Agreement is received by MEA, as determined by the official MEA date stamp on the first page of the Agreement.

(D) Unless an extension is permitted as described below, all Phase I activities must be completed by no later than **June 30, 2021** with all Phase I documentation completed and submitted to MEA by no later than September 30, 2021. Extensions may be requested in writing in advance of a deadline, but are not guaranteed. Extensions shall only be permitted for good cause shown, such as circumstances outside of College's control, as determined solely by MEA in writing.

4. Reporting and Reimbursement

(A) The College shall retain bills of sale or other satisfactory evidence of the acquisition of any real or personal property, as well as reports, activity logs, timelines, estimated and actual energy savings and/or generated, supporting documentation for any other expenses that are covered in whole or in part by any Grant Funds, and any other information related to MOU activities for at least three years from the date that the College receives final reimbursement from MEA. MEA, MEA's agents, the Department of Budget and Management, the State Comptroller, or the Legislative Auditor, may examine and audit this evidence on request, at any reasonable time within the retention period. In addition, the College shall also make the worksite available to MEA, or its agents, upon request at any reasonable time for at least three years from the date that the College receives final reimbursement from MEA.

(B) Program Reporting and Invoicing.

(i) Invoicing and Reporting.

(a) To be reimbursed for Phase I (audit implementation), College shall provide copies of invoices, a completed energy audit report and relevant documentation.

(b) To be reimbursed for Phase II (Construction), College shall provide copies of invoices for all project-related expenses as well as relevant certifications of building code compliance.

(c) MEA may only provide Grant funds for reimbursement after receipt of appropriate invoices and reports with sufficient documentation of expenditures, as determined by MEA. Such documentation may include but is not limited to, contractor and/or vendor invoices, receipts, detailed timekeeping records including at a minimum, hourly rate, time, and task, and detailed mileage logs.

(d) All Invoices shall be submitted on College letterhead. All invoices shall contain the MEA MOU number, College contact information, and a detailed description of the equipment, material, and/or labor or other expenses being invoiced. No personally identifiable information (PII) shall be submitted to MEA as part of the invoicing documentation.

(C) College may submit Reports, Invoices and other documents electronically to [Christopher Russell, MEA Program Manager, \[chris.russell@maryland.gov\]](mailto:chris.russell@maryland.gov) after obtaining authorization in writing from MEA. If authorization has not been obtained, College shall mail Reports, Invoices and other documents to MEA at the following address:

**Maryland Energy Administration
Christopher Russell, Program Manager
1800 Washington Blvd, Suite 755
Baltimore, MD 21230**

After review of the Reports, Invoices and any supporting documents or information requested by MEA, MEA shall make a final determination of whether the College has met all Program requirements, terms and conditions, and process the grant award for payment as promptly as possible, if warranted. Grant funds shall not be provided for work that has yet to be performed, costs that have yet to be incurred or are not sufficiently documented, or are inconsistent with the purpose, terms and conditions of the MOU.

(D) For monitoring and evaluation purposes, the College shall make available to MEA, or its agents, all reports, activities logs, work sites, timelines, estimated and actual energy savings or generated, or other information related to the Grant activities during regular business hours.

(E) No grant monies will be funded for costs or obligations incurred, or work performed, prior to the Effective Date of this Agreement.

(F) Prior to execution of this Agreement, Grant funds are subject to change in amount and existence based on funding availability.

(G) Projects must be located within the State of Maryland.

5. General Conditions

(A) Any expenditure of Grant funds that is not consistent with the purposes of the MOU, or that violates any requirement, term or condition of this Agreement, may, in the sole judgment of MEA, be disallowed. Should any expenditure be disallowed, the State may require repayment to MEA for reimbursement of the Strategic Energy Investment Fund, an offset from any State grant to the College in the current or succeeding fiscal year, or other appropriate action. The College shall immediately repay to the State any part of the Grant that is not used for the purposes of the Program.

(B) College may not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or any other characteristic forbidden as a basis for discrimination by applicable laws, and certifies that its Constitution or by-laws contains a non-discrimination clause consistent with the Governor's Code of Fair Practices.

(C) College shall ensure that all work performed pursuant to the Grant and this Agreement is completed by contractors and/or staff holding all necessary certifications and licenses. College shall ensure that any business or non-profit organization operating in Maryland with which College contracts or partners to carry out the purposes of the Grant is registered and in good standing with the Maryland State Department of Assessments and Taxation, if applicable. Additionally, all work performed pursuant to the Grant shall comply with all applicable local, State, and federal building codes and other applicable laws and regulations.

(D) The person executing this Agreement on behalf of the College certifies, to the best of that person's knowledge and belief, that:

(i) The person is authorized to sign this Agreement on behalf of the College and to commit the College to the obligations set forth herein.

(ii) Neither the College, nor any of its officers or directors, nor any employee of the College involved in obtaining contracts with or grants from the State or any subdivision of the State, has engaged in collusion with respect to the College's application for the Grant or this Agreement or has been convicted of bribery, attempted bribery, or conspiracy to bribe under the laws of any state or the United States.;

(iii) Neither the College, nor any of its officers or directors, nor any employee of the College has engaged in any practice with regard to this Grant that is inconsistent with Md. Code Ann., State Finance and Procurement § 13-212.1.

(iv) College has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the College, to solicit or secure the Grant or this Agreement, and the College has not paid or agreed to pay any such entity any fee or other consideration contingent on the making of the Grant or this Agreement.

(v) XXXX College, if a business or non-profit organization, is incorporated or is registered to do business in the State, and is in good standing with the Maryland State Department of Assessments and Taxation.

(vi) XXXX College, if a health or social welfare organization, as defined by Md. Code Ann., State Finance and Procurement § 7-403, shall keep financial records in accordance with uniform accounting standards, as more fully described in § 7-403.

(vii) Pursuant to Code of Md. Regulations (COMAR) 21.08.04.04, neither the College, nor any of its officers or directors, nor any person substantially involved in the contracting or fund-raising activities of the College, is currently suspended or debarred from contracting with the State or any other public entity or subject to debarment under Md. Code Ann., [State Finance and Procurement Article, §16-202](#) or COMAR 21.08.03.01-.02.

(viii) The College is not in default on any financial obligation to the State or MEA.

6. False Statement

Pursuant to Md. Code Ann., State Government § 9-20B-11, a person may not knowingly make or cause to be made any false statement or report in any document required to be furnished by MEA in relation to a SEIF-funded Grant.. Any violation of this provision is a misdemeanor and on conviction is subject to a fine not exceeding \$50,000.00 or imprisonment not exceeding 1 year or both ().

7. Historic Preservation Review

For each project being funded in whole or in part through this Agreement, a historic preservation review must first be completed by the Maryland Historical Trust (MHT) or MEA's historical preservation expert. This review ensures that no historical property is "adversely affected" through this Program. Prior to starting construction, College shall assure that MEA has received documentation from MHT or MEA's historical preservation expert indicating that the Project will have no adverse effect on a historical property.

8. Maryland Saved Harmless

To the extent allowed by Maryland law, the College agrees to defend, indemnify and hold MEA harmless from and against any and all damages, claims, lawsuits, actions, and reasonable out-of-pocket costs and expenses, in whatever form, arising from or related to the Grant. MEA expressly reserves the right of any immunity MEA or its employees may possess under State or federal law. If the College is a Maryland State agency or local government, then each party shall be responsible for its own liability associated with the Grant, and neither party waives any applicable immunities.

9. Environmental Standards and Liability

The College shall ascertain and abide by all applicable environmental standards set by federal, state or local laws, rules or regulations related to the performance of the obligations pursuant to the Agreement (“Environmental Standards”). The College shall monitor its compliance with Environmental Standards and immediately halt and correct any incident of non-compliance.

In the event of any incident of non-compliance with Environmental Standards, the College shall:

- (A) Give MEA immediate notice of the incident to the MEA Representative named in Section 16 of this Agreement, or designee, providing as much detail as possible;
- (B) If requested by MEA, submit a written report to MEA, identifying the source or cause of the non-compliance and the method or action required to correct the problem; and
- (C) Cooperate with MEA or its designated agents or contractors with respect to the investigation of such problem.

To the limits allowed by Maryland law (and without waiving any local or State government immunities that may apply if College is a Maryland State or local government), the College shall be liable for (i) all environmental losses, including but not limited to, costs, expenses, losses, damages, actions, claims, penalties, fines and remedial or cleanup obligations arising from its failure to comply with Environmental Standards; and (ii) any hazardous material located or placed in the Project and any requirements imposed by any governmental authority with respect to hazardous materials, arising in connection with the Grant or the Project.

10. MEA Access to Project Site and Ability to Use Project Information

(A) XXXX College shall allow MEA employees or representatives access to the relevant building and structures so that MEA may perform monitoring visits to provide technical assistance and to ensure that project requirements are fully satisfied. College shall also allow MEA employees or representatives access to the relevant project site in order to take photographs or video of the project for MEA use. College shall participate in MEA-organized press events and shall host State government officials for visits and tours as requested by MEA. MEA shall provide reasonable notice to College prior to scheduling a press event or official visit.

(B) The College understands and agrees that MEA may use information about the project for reporting and marketing purposes, including but not limited to the project description, building type, energy measures, project costs, leveraged funds, energy and financial savings, and pictures and videos of the premises. MEA shall provide the College an opportunity to review and consult with MEA to assure that a written case study, photo or video taken of its facility will not disclose confidential personal and/or business information.

(C) If the Project's location is owned or controlled by a third party at any time during the MOU period, the College shall be responsible for obtaining written permission from the third party to allow MEA access to the property for all of the purposes described in this Agreement. MEA shall not provide any further reimbursement of funds under the Agreement until College provides the relevant written permission.

11. Maryland Law Prevails

The internal laws of Maryland shall govern the interpretation and enforcement of this Agreement, except for any choice of law provisions utilized by Maryland.

12. Agreement Binding on Successors and Assigns

This Agreement shall bind the respective successors and assigns of the Parties.

13. Assignment or Transfer

The College may not sell, transfer, or assign any of its obligations under this Agreement, or its rights, title, or interest in this Agreement, without further prior written consent of MEA.

14. Amendments to the MOU

No amendment to this Agreement is binding unless it is in writing and signed by both parties.

15. Party Representatives

The following individuals shall have the authority to act under this Agreement for their respective parties, subject to all necessary approvals:

Christopher Russell, MSEC Project Manager
Maryland Energy Administration
(410) 537-4074

(Or any such person as may be designated in writing by the Director of MEA.)

[Name of College signatory, title]
XXXX College

(Or any other person as may be designated in writing by the President of XXXX College.)

16. Merger

This Agreement and any terms and conditions expressly incorporated by reference herein embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations referring to the subject matter, other than those contained herein or incorporated herein by reference.

17. Non-waiver of Rights; Remedies

No failure on the part of the State or MEA to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any such right preclude the State or MEA from further exercising that or any other right. The remedies provided under this Agreement are cumulative and not exclusive of any remedies provided by law.

THIS AGREEMENT HAS BEEN APPROVED BY THE ATTORNEY GENERAL'S OFFICE AT MEA. NO CHANGES, MODIFICATIONS, ADDITIONS OR DELETIONS TO THIS AGREEMENT ARE AUTHORIZED ABSENT SPECIFIC WRITTEN AGREEMENT BY THE PARTIES AND APPROVAL BY THE ATTORNEY GENERAL'S OFFICE AT MEA. ANY UNAUTHORIZED CHANGES, MODIFICATIONS, OR DELETIONS TO THIS FORM AGREEMENT WILL RENDER MEA'S OBLIGATIONS UNDER THIS AGREEMENT VOIDABLE AT MEA'S ELECTION.

IN TESTIMONY WHEREOF, WITNESS the hands and seals of the parties.

XXXX College

By: _____

Date: _____

[Name, title]

MARYLAND ENERGY ADMINISTRATION

By: _____

Date: _____

Mary Tung, Director

Approved for Form and Legal Sufficiency

this _____ day of _____, 20XX

Assistant Attorney General